APPEAL NO. 041629
FILED AUGUST 19, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on June 21, 2004. The hearing officer resolved the disputed issues by deciding that Dr. A was properly appointed as the designated doctor by the Texas Workers' Compensation Commission (Commission) to determine an impairment rating (IR) and that the appellant's (claimant) correct IR is 3%. The claimant appeals, disputing the hearing officer's decision and order. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The parties agreed that there were two issues in dispute to be decided at the CCH: (1) Was Dr. A properly appointed as the designated doctor in accordance with Section 408.0041 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5 (Rule 130.5); and (2) What is the IR? The parties stipulated that the claimant reached maximum medical improvement (MMI) on March 8, 2003, which was the date of statutory MMI. We note extent of injury was not an issue before the hearing officer.

In Texas Workers' Compensation Commission Appeal No. 040633-s, decided May 7, 2004, we retreated from our decision in Texas Workers' Compensation Commission Appeal No. 030737-s, decided May 14, 2003, based upon Commission Advisory 2004-03, dated April 19, 2004, where the Executive Director stated that the "phrase 'scope of practice' as it is commonly used is synonymous with a doctor's licensure." Under the advisory, because Dr. A is a medical doctor, he satisfies the requirement of having the same licensure as the doctor treating the claimant and he was, therefore, properly appointed as the designated doctor. Accordingly, the hearing officer did not err in determining that Dr. A was properly appointed as the designated doctor in this instance.

Section 408.125(e) provides that where there is a dispute as to the date of MMI and the IR, the report of the Commission-selected designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. We have previously discussed the meaning of "the great weight of the other medical evidence" in numerous cases. We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also held that no other doctor's report, including the report of the treating doctor, is accorded the special, presumptive status accorded to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992;

Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993.

Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor was a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

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Chris Cowan
Appeals Judge